IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 2ND NOVEMBER, 2007 / 11TH KARTHIKA, 1929

CMA.No. 2 of 2002()

(OP.4/2000 of PRL.SUB COURT, KOZHIKODE)
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APPELLANTS/PETITIONERS:
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1. M.JOY VARGHESE,RESIDING AT JOGI, CHALAPURAM IN KASBA AMSOM DESOM OF KOZHIKODE TALUK.

2. P.L.SONY, RESIDING AT BEACH ROAD IN VADAKARA AMSOM AND DESOM OF KOZHIKODE TALUK, DO.DISTRICT.

3. N.C.SHENOY, RESIDING AT 1/3814, EAST HILL ROAD IN KACHERI AMSOM AND DESOM OF KOZHIKODE TALUK.

4. K.SAHADEVAN,RESIDING AT BEAUTY LAND PARA YANCHERI IN KOTTULLI AMSOM AND DESOM OF KOZHIKODE TALUK.

5. P.M.MOHAMMED KOYA AT NEW HOUSE,OPPOSITE VATTAMPAYIL,RAILWAY GATE,SOUTH KALLAI,IN NAGARAM AMSOM,DESOM OF DO DISTRICT

BY ADV. SRI.P.R.VENKETESH

RESPONDENTS:
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1. VYAPARABHAVAN TRUST,HAVING ITS PRINCIPAL PLACE OF BUSINESS AND OFFICE SITUATED AT BANK ROAD CALICUT IN KALATHINKUNNU AMSOM & DESOM OF KOZHIKODE TALUK DO,DIST.REP.BY ITS 1ST CHAIRMAN, T.NAZARUDHEEN,RESIDING AT BEAUTY ARTS,4/31-A KANUR RD,IN KALATHINKUNNU AMSOM & DESOM, KOZHIKODE TALUK AND DISTRICT.

2. T.NAZARUDHEEN,RESIDING AT BEAUTY ARTS 4/31-A,KANNUR ROAD,IN KALATHINKUNNU AMSOM & DESOM OF KOZHIKODE TALUK AND DISTRICT.

3. T.A.MAJEED,PULLATHUNDIL PARAMBIL NEAR
P.J.ANTONY GROUND,PACHALAM,COCHIN-12

BY ADV. SRI.C.P.MOHAMMED NIAS
SRI.A.M.SHAFFIQUE
SRI.V.G.ARUN
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

C.M.A.No. 2 of 2002

Dated this the 2nd day of November, 2007

J U D G M E N T

Raman,J:

This appeal is filed against the order declining leave to institute the suit under Section 92 of the Code of Civil Procedure filed by the petitioners.

2. The appellants/plaintiffs have filed the suit under Section 92 of the Code of Criminal Procedure seeking for a declaration that the alleged sale deed dtd.17.11.1999, registered as document No.904 of 1999 of the Sub Registrar's Office, Kozhikode and executed by the second defendant in favour of the third defendant as void, inoperative, unsustainable and unenforceable and as not valid and binding on the plaint schedule property or any portion of the same, the plaintiffs or others who are interested in the first defendant Trust including as beneficiaries of the trust and to set aside the sale deed and for consequential injunction and other incidental reliefs.

3. From the reliefs sought for, there is no doubt that the main relief is seeking to set aside the document and other reliefs are incidental thereto. The court below, after considering the reliefs sought for and after placing reliance on the various decisions cited by both sides, came to the conclusion that the relief as such prayed in the complaint does not come within the ambit of Section 92 (a) to (h) of the Code of Civil Procedure and accordingly, declined to grant leave, against which the appeal is filed.

4. The Apex Court in **Bishwanath** v. **Radha Ballabhji** (AIR 1967 SC 1044) held as follows:-

> "7. It is settled law that to invoke S.92 of the Code of Civil Procedure, 3 conditions have to be satisfied; namely, (i) the trust is created for public purposes of a charitable or religious nature; (ii) there was a breach of trust or a direction of Court is necessary in the administration of such a trust; and (iii) the relief claimed is one or other of the reliefs enumerated therein. If any of the 3 conditions is not satisfied, the suit falls outside the scope of the said section. A suit by an idol for a declaration of its title to property and for possession of the same from the defendant, who is in possession thereof

under a void alienation, is not one of the reliefs found in S.92 of the code of Civil Procedure. That a suit for declaration that a property belongs to a trust in held to fall outside the scope of S.92 of the Code of Civil Procedure by the Privy council in Abdur Rahim v. Abu Mahomed Barkat Ali, 55 Ind App 96: (AIR 1928 PC 16), and by this court in Pragdasji Guru Bhagwandasji v. Iswarlalbhai Narsibhai, 1952 SCR 513: (AIR 1952 SC 143), on the ground that a relief for declaration is not one of the reliefs enumerated in S.92 of the Code of Civil Procedure. So too for the same reason a suit for a declaration that certain properties belong to a trust and for possession thereof from the alienee has also been held to be not covered by the provisions of S.92 of the Code of Civil Procedure: See Mukhda Mannudas Bairagi v. Chagan Kisan Bhawasar, ILR (1957) Bom 809: (AIR 1959 Bom 491). Other decisions have reached the same result on a different ground, namely, that such a suit is one for the enforcement of a private right. It was held that a suit by an idol as a juristic person against persons who interfered unlawfully with the property of the idol was a suit for enforcement of its private right and was, therefore, not a suit to which S.92 of the Code of Civil Procedure applied: See (Darshan Lal v. Shibji Maharaj Birajman, ILR 45 All 215: (AIR 1923 All 120); and Madhavrao Andandrao v. Shri Omkareshvar Ghat, 81 Bom LR 192: (AIR 1929 Bom 153). The present suit is filed by the idol for possession of its property from the person who is in illegal

> possession thereof and, therefore, it is a suit by the idol to enforce its private right. The suit also is for a declaration of the plaintiff's title and for possession thereof and is, therefore, not a suit for one of the reliefs mentioned in S.92 of the Code of Civil Procedure. In either view, this is a suit outside the purview of S.92 of the said Code and, therefore, the said section is not a bar to its maintainability."

5. There cannot be any doubt, therefore, that unless the appellant satisfies that the relief sought for will also fall within the ambit of (a) to (h) of Section 92, no relief as such could be granted under Section 92, since all the three conditions mentioned in Section 92 including the relief as mentioned above should be satisfied for maintaining a suit in the nature mentioned under Section 92 and to seek any leave thereof. In that case also, the suit was instituted by the deity represented by his next friend against the appellants therein seeking for a declaration that the deity was the proprietor of the house, for possession thereof and for mesne profits. The case of the plaintiff in that suit (the first respondent therein) was that the second defendant

to the suit who is the Manager of the deity executed a sale deed, conveying the property to the first defendant to the suit, for a consideration of Rs.10,000/- and that the sale, not being for necessity or for the benefit of the idol, was not binding on the deity. It was considering the said relief, the apex court held that the suit for declaration that the property belongs to a trust, will fall outside the scope of 92 of the C.P.C.

6. Even though it was contended by the learned counsel appearing for the appellant that the relief as sought for may fall under the residuary clause (h) of Section 92, it has to be held that the said clause should be read in conjunction with the other clauses (a) to (g) and not in isolation thereof. In a decision reported in **St.John's Jacobite Syrian Church** v. **Fr.John Moolamattom** (2005(1) KLT 307), one of us (PRR(J)) dealt with the question regarding the interpretation of the words 'further and other reliefs' under head (h) and after referring to the various case laws on the subject, it was held that the relief sought for in the said case did

not fall under head (h) as it is not in consonance with the specific heads (a) to (g). In the result, there is no merit in this appeal. Accordingly, the same is dismissed.

7. Learned counsel appearing for the appellant however prayed that the dismissal of the suit shall not prejudicially affect his right if any to take appropriate proceedings with proper relief. Needless to say, the leave was declined because the prayer as such made in the plaint does not fall under (a) to (h) of Section 92. That being the case, if the petitioner is otherwise entitled to maintain an application under Section 92 bringing it within its scope and ambit, necessarily the present proceedings will not stand in his way.

P.R.RAMAN,
Judge

V.K.MOHANAN,
Judge

Mbs/

P.R.RAMAN &
V.K.MOHANAN, J.

CMA.NO. 2 OF 2002

J U D G M E N T

DATED: 2-11-2007